MOTION FILED

NOV 23 1983

NO. 83-533

In the Supreme Court of the United States

OCTOBER TERM, 1983

JERRY K. NICHOLSON,

Petitioner,

v.

INTERSTATE COMMERCE COMMISSION AND UNITED STATES OF AMERICA; LOUISIANA SOYBEAN ASSOCIATION; AND MISSOURI PACIFIC RAILROAD COMPANY;

Respondents.

On Petition For A Writ of Certiorari To The United States Court of Appeals For The District Of Columbia Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF OF LOUISIANA LANDMARKS SOCIETY, AMICUS CURIAE

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Date: November 17, 1983

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Pursuant to Rules 36.1 and 42.2(b) of the Rules of this Court, Louisiana Landmarks Society (the "Society") hereby requests leave to file a brief *amicus curiae* in support of the petition for a writ of certiorari filed by Jerry K. Nicholson in the referenced case. In support of this request, the Society states as follows:

1. The case at bar involves the Interstate Commerce Commission's disclaimer of jurisdiction over the construction, by Missouri Pacific Railroad Company ("Missouri Pacific"), of a major railroad facility on farmland in Louisiana largely owned by Petitioner Nicholson. That facility is to be located in close proximity to Nicholson's home, which predates the Civil War and has been listed in the National Register of Historic Places. The railroad yard, if built, will seriously detract from the aesthetic qualities of that landmark.

2. Louisiana Landmarks Society, the largest and oldest preservation organization in the State of Louisiana, takes an active interest in the preservation of historical landmarks such as Nicholson's home, and wishes to present its views on that subject. The Society is in a unique position to make such a presentation; no other party appears to have focused on the historical preservation aspect of this case. Historical considerations, of course, are appropriate under section 101 of the National Environmental Policy Act, 42 U.S.C. § 4331 (1976), as implemented by the Interstate Commerce Commission ("Commission"). *See* 49 C.F.R. § 1105.7(a)(10) (1982). By disclaiming jurisdiction over Missouri Pacific's railroad yard construction, the Commission has overlooked an important point that it would have considered if it had been made a "public convenience and necessity" evaluation pursuant to 49 U.S.C. § 10901(a) (Supp. V 1981), or even if it had granted an exemption pursuant to 49 U.S.C. § 10505 (Supp. V 1981).

3. The Society has asked the parties for their consent to the filing of this brief. Petitioner, and Respondents Louisiana Soybean Association and Interstate Commerce Commission, have given their consent. Missouri Pacific Railroad Company and the United States of America,

however, have not consented, necessitating this motion.

4. Acceptance of the very short brief that the Society proposes to file (*see* attached) should not burden the Court. On the contrary, it should enhance the Court's consideration of the issues.

WHEREFORE, it is respectfully requested that the attached brief *amicus curiae* be accepted for filing.

Respectfully submitted,

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TABLE OF AUTHORITIES

Page

42 U.S.C. §1500a(d) (1976) 2
42 U.S.C. § 4331 (1976) 2
49 U.S.C. § 10505 (Supp. V 1981) 2
49 U.S.C. § 10901(a) (Supp. V 1981) 2
49 C.F.R. §§ 1105.6 (1982) 2
49 C.F.R. §§ 1105.7(a)(10) (1982) 2

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BRIEF OF LOUISIANA LANDMARKS SOCIETY, AMICUS CURIAE

Louisiana Landmarks Society (the "Society"), *amicus curiae,* hereby submits its brief in support of the September 28, 1983, petition for a writ of certiorari filed by Jerry K. Nicholson ("Nicholson") in the referenced case.

The Society, with approximately 1,500 members, is the largest and oldest historical preservation organization

in the State of Louisiana. Over the years it has registered its support, in various proceedings, for the preservation of landmarks in the state.

The outcome of this case is of interest to the Society because an historical landmark is located immediately adjacent to the railroad classification yard that the Missouri Pacific Railroad Company ("Missouri Pacific") proposes to build. Petitioner Nicholson's home is of pre-Civil War construction and, indeed, is listed in the National Register of Historic Places provided for in 42 U.S.C. § 1500a(d) (1976). The $75 million, 550-acre railroad yard that Missouri Pacific proposes to build will be largely on Nicholson's land and will be located a mere 1,000 feet from the historical structure in question. The construction of so large a railroad facility so close to an important landmark will seriously detract from the aesthetic qualities of that landmark.

The effect of such construction on an historical landmark, of course, falls within the ambit of section 101 of the National Environmental Policy Act of 1969, 42 U.S.C. § 4331 (1976), and thus is one factor appropriately and normally taken into consideration by the Interstate Commerce Commission (the "Commission"). *See* 49 C.F.R. §§ 1105.6 and 1105.7(a)(10) (1982). By disclaiming jurisdiction over Missouri Pacific's railroad yard construction, the Commission has overlooked an important point that it would have considered if it had made a "public convenience and necessity evaluation" pursuant to 49 U.S.C. § 10901(a) (Supp. V 1981), or even if it had granted an exemption pursuant to 49 U.S.C. § 10505 (Supp. V 1981).

Accordingly, Louisiana Landmarks Society urges the Court to grant Nicholson's petition for a writ of

certiorari. On review the Court should direct the Interstate Commerce Commission to consider whether Missouri Pacific's proposed railroad yard construction meets the statutory "public convenience and necessity" standard, once all pertinent factors, including the historical value of the landmark on Nicholson's property, are taken into account.

Respectfully submitted,

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